

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BEVERLY ALLEN, Individually and on)	
Behalf of the Class,)	
)	CASE NO. 1:20-cv-00530-NONE-JLT
Plaintiff,)	
)	JOINT STIPULATION TO CONTINUE
vs.)	BRIEFING SCHEDULE RE:
)	DEFENDANTS' MOTION TO DISMISS;
PROTECTIVE LIFE INSURANCE)	ORDER
COMPANY and EMPIRE GENERAL LIFE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

Plaintiff BEVERLY ALLEN (“Plaintiff”) and Defendants PROTECTIVE LIFE INSURANCE COMPANY and EMPIRE GENERAL LIFE ASSURANCE CORPORATION¹ (collectively, the “Defendants”), by and through undersigned counsel, hereby stipulate as follows:

WHEREAS, on June 22, 2020, Defendants filed a Motion to Dismiss (Doc. No. 12). The hearing on Defendants' Motion to Dismiss was originally set for August 4, 2020.

WHEREAS, on July 15, 2020, Plaintiff's counsel e-mailed Defendants' counsel the following:

"San Diego yesterday shut down offices due to a spike in COVID. We would like a three week extension

¹ Defendants contend that Empire General Life Assurance Corporation is incorrectly identified in the Complaint as Empire General Life Insurance Company.

1 of our time to file our opposition to the motion and extend your reply brief accordingly. Is that
2 acceptable?”

3 WHEREAS, Defendants agreed to Plaintiff’s request, and in exchange, Plaintiff agreed that
4 Defendants would have fourteen days to file a reply to Plaintiff’s opposition.

5 WHEREAS, on July 16, 2020, the parties filed a Joint Stipulation to Continue Briefing Schedule
6 Re: Defendants’ Motions (Doc. No. 16). In this Joint Stipulation, the parties agreed to move the hearing
7 date on Defendants’ Motion to Dismiss to September 1, 2020, and the parties further agreed that Plaintiff
8 would file her opposition on or before August 11, 2020, and Defendants would file their reply fourteen
9 days later on August 25, 2020.

10 WHEREAS, on July 17, 2020, the Court entered an Order on the parties’ Joint Stipulation (Doc.
11 18), which stated in relevant part: “In accordance with the parties’ joint stipulation . . . The current August
12 4, 2020, hearing date for Defendants’ Motion to Dismiss (Doc. No. 12) will be continued to September
13 1, 2020, although the parties are reminded that pursuant to the Standing Order Re Judicial Emergency
14 issued April 14, 2020, (Doc. No. 3-3), the matter will be taken under submission on the papers pursuant
15 to Local Rule 230(g) and the hearing date serves only to set the deadlines for the filing of any oppositions
16 or replies.”

17 WHEREAS, the parties have differing interpretations of the Court’s Order (Doc. 18) concerning
18 the briefing deadlines for Defendants’ Motion to Dismiss. Under Plaintiff’s interpretation, the Court did
19 not sign the stipulation and proposed order (Doc 16) but instead issued an order setting a continued
20 hearing date with language stating “the hearing date serves only to set the deadlines for the filing of any
21 oppositions or replies.” Plaintiff understood this order to reject our stipulated briefing schedule and set
22 the new briefing schedule based on the new hearing date and pursuant to Local rule 230 which would
23 have opposition due on August, 18 and the reply due on August 25, 2020. Conversely, Defendants
24 interpret the order to have been entered “[i]n accordance with the parties’ joint stipulation”, which
25 required Plaintiff to file an opposition to the motion to dismiss by August 11, 2020, and gave Defendants
26 until August 25, 2020 (i.e., fourteen days) to file their reply brief.

1 WHEREAS, to avoid unnecessary motion practice concerning whether Plaintiff's opposition is
2 timely/untimely and also to give effect to the parties' agreement to provide Defendants with a fourteen-
3 day period to file their reply, the parties agree to continue the hearing date on Defendants' Motion to
4 Dismiss to September 8, 2020, as well as the associated briefing deadlines (such that Plaintiff's
5 opposition will be due on or before August 18, 2020 and Defendants' reply will be due on or before
6 September 1, 2020.

7 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff
8 and Defendants, through their respective counsel, to the following briefing and hearing schedule for
9 Defendants' Motion to Dismiss (Doc. No. 12):

10 1. The current September 1, 2020, hearing date for Defendants' Motion to Dismiss (Doc.
11 No. 12) shall be continued to September 8, 2020;

12 2. Plaintiff shall have until August 18, 2020, to file her opposition to Defendants' Motion to
13 Dismiss;

14 3. Defendants shall have until September 1, 2020, to file their reply to Plaintiff's opposition
15 to Defendants' Motion to Dismiss; and

16 4. The parties further agree that this case is in its early stages and that no party is prejudiced
17 by the proposed stipulated schedule.

18 **IT IS SO STIPULATED:**

19 DATED: August 13, 2020

NICHOLAS & TOMASEVIC, LLP

20
21 By: /s/ Craig M. Nicholas (w/ permission)
CRAIG M. NICHOLAS

22 Attorneys for Plaintiff BEVERLY ALLEN
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1 DATED: August 13, 2020

MAYNARD, COOPER & GALE, LLP

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3 By: /s/ Nicholas J. Boos

NICHOLAS J. BOOS

4 Attorneys for Defendants PROTECTIVE LIFE
5 INSURANCE COMPANY and EMPIRE
6 GENERAL LIFE ASSURANCE
7 CORPORATION

8 **ORDER**

9 In accordance with the parties' joint stipulation, IT IS SO ORDERED:

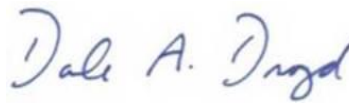
10 1. The current September 1, 2020, hearing date for Defendants' Motion to Dismiss (Doc.
11 No. 12) will be continued to September 8, 2020, although the parties are reminded that pursuant to the
12 Standing Order Re Judicial Emergency issued April 14, 2020, (Doc. No. 3-3), the matter will be taken
13 under submission on the papers pursuant to Local Rule 230(g).

14 2. Plaintiff's opposition to Defendants' Motion to Dismiss shall be filed on or before August
15 18, 2020.

16 3. Defendants' reply to Plaintiff's opposition shall be filed on or before September 1, 2020.

17 IT IS SO ORDERED.

18 Dated: August 13, 2020

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20 _____
UNITED STATES DISTRICT JUDGE